

CHAPTER NO. 388

SENATE BILL NO. 774

By Harper, Kyle, Clabough, Williams

Substituted for: House Bill No. 474

By Maddox, Boyer, McCord, Bunch, Overbey, Sherry Jones, Pruitt, Black, Langster, Brooks

AN ACT To amend Tennessee Code Annotated, Section 34-11-103; Title 36; Title 37; Section 63-6-218 and Title 68, relative to the abandonment of infants.

WHEREAS, The general assembly recognizes the detrimental effect infant abandonment has on children and families in the State of Tennessee; and

WHEREAS, The general assembly recognizes the need to provide a system through which parents may safely relinquish custody of unwanted newborns and to encourage community educational outreach that will inform pregnant women of services and alternatives available through the Departments of Health and Children's Services; and

WHEREAS, The general assembly recognizes that any process for relinquishing custody of an infant should contain protections for all parties to enable the child to achieve permanency in its new adoptive home without interference by any person who may claim an interest after the child has adjusted to a new family; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new, appropriately designated section:

§ 68-11-255 (a) As used in this section and in Section 36-1-142, unless the context otherwise requires:

(1) "Facility" means any hospital as defined by Section 68-11-201(21), birthing center as defined by Section 68-11-201(6), community health clinic, and any out-patient "walk-in" clinic; and

(2) "Member of the professional medical community" has the meaning provided in Section 68-140-202(9); provided that such member of the professional medical community is on the premises at the time of such voluntary delivery; and

(3) "Voluntary delivery" means the action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a facility, as defined by this section, with any facility employee or member of the professional medical community at such facility without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

(b) Any facility shall receive possession of any newborn infant left on facility premises with any facility employee or member of the professional medical community, if the infant:

(1) Was born within the preceding seventy-two (72) hour period, as determined within a reasonable degree of medical certainty;

(2) Is left in an unharmed condition; and

(3) Is voluntarily left by a person who purported to be the child's mother and who did not express an intention of returning for the infant.

(c) The facility, any facility employee and any member of the professional medical community at such facility shall inquire whenever possible about the medical history of the mother or newborn and whenever possible shall seek the identity of the mother, infant or the father of the infant. The facility shall also inform the mother that she is not required to respond, but that such information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the Department of Children's Services, for use consistent with the purposes of this act. The facility may provide the parent contact information regarding relevant social service agencies, shall provide the mother the name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the

facility shall also provide the mother with both orally delivered and written information concerning the requirements of this act relating to recovery of the child and abandonment of the child.

(d) The facility, any facility employee and any member of the professional medical community at such facility shall perform any act necessary to protect the physical health or safety of the child.

(e) As soon as reasonably possible, and no later than twenty-four (24) hours of receiving a newborn infant, the facility shall contact the Department of Children's Services, but shall not do so before the mother leaves the hospital premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.

(f) Notwithstanding any provision of law to the contrary, any facility, any facility employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of this act, and no lawsuit shall be predicated thereon; provided, however, that nothing in this act shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 1, Part 1, is amended by adding the following as a new section, to be designated as follows:

Section 36-1-142. (a) Notwithstanding any other provision of law to the contrary and without complying with the surrender provisions of this part, any facility as defined by Section 68-11-255, shall receive possession of an infant aged seventy-two (72) hours or younger upon the voluntary delivery of the infant by the infant's mother, pursuant to Section 68-11-255.

(b) The facility, any facility employee or any member of the professional medical community at such facility shall notify the Department of Children's Services as soon as reasonably possible and no later than twenty-four (24) hours of taking possession of an infant under this section. The department or the department's authorized designee shall immediately assume the care, custody and control of such infant and shall petition the appropriate court for legal custody of such child.

(c) Voluntary delivery of an infant pursuant to Section 68-11-255 and failure of the mother voluntarily delivering such child to visit or seek contact with such infant for a period of thirty (30) days after the date of delivery, and failure to seek contact with the infant through the department or to revoke the voluntary delivery within thirty (30) days after notice was completed pursuant to this section, which shall cumulatively be no less than ninety (90) days from the date such child was voluntarily delivered to such facility, shall be a basis for termination of parental rights pursuant to this part.

(d)(1) A mother who voluntarily delivers an infant pursuant to Section 68-11-255 may revoke such voluntary delivery by applying to a court that is qualified to receive a surrender pursuant to Section 36-1-111 no later than thirty (30) days after notice was completed under (e).

(2) After such thirty (30) days, no voluntary delivery pursuant to Section 68-11-255 shall be set aside except upon clear and convincing evidence of duress, fraud or intentional misrepresentation.

(e)(1) Within ten (10) days of receipt of an infant under this section, the department shall give notice once a week for four (4) consecutive weeks in a newspaper or other publication of general circulation in the county in which such voluntary delivery occurred. The department shall also give such notice in any other county for which there are any facts known to the department that reasonably indicate the infant's mother or father may be so located. The notice shall include information to provide an opportunity for the putative father to claim paternity and for the mother to revoke her voluntary delivery. Such notice shall describe the infant, identify where and when voluntary delivery occurred, specify how and who to contact for follow up and provide any other relevant information.

(2) The notice shall specify that failure to seek contact with the infant through the department or to revoke the voluntary delivery within thirty (30) days of the date of the last publication of notice shall constitute abandonment of the infant and of the mother's interest.

(3) The notice shall specify that any father of such infant who fails to claim paternity by contacting the department or registering with the putative father registry pursuant to §36-2-318 within thirty (30) days of the last publication shall be barred from thereafter bringing or maintaining any action to establish his paternity of the infant. It shall also specify that such failure shall constitute

abandonment of any right to notice of, or to a hearing in, any judicial proceeding for the adoption of such infant and that consent of such putative father shall not be required for adoption of the infant.

(f) The department shall designate one or more persons to serve as a contact in the event the mother requires additional information, including but not limited to the legal effect of voluntary delivery of her infant, revocation of voluntary delivery, availability of relevant social services and follow-up inquiries once the mother has left the facility. The department shall provide all facilities designated to receive infants under this section with the name, phone number and other necessary information regarding such contact person.

SECTION 3. Tennessee Code Annotated, Section 37-1-157, is amended by adding the following language as a new subsection:

(d) The provisions of subsection (a) shall not be construed to impose criminal liability upon a mother based solely upon her act of voluntarily delivering a newborn infant at a facility pursuant to § 68-11-255.

SECTION 4. Tennessee Code Annotated, Section 36-1-102(1)(A), is amended by adding the following language as a new subdivision:

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under Section 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant.

SECTION 5. Tennessee Code Annotated, Section 37-2-402(10)(A), is amended by adding the following language as a new subdivision:

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255, and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under Section 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant.

SECTION 6. Tennessee Code Annotated, Section 36-2-318, is amended by adding the following as a new subsection (k):

(k) At the time a person files a written notice of intent to claim paternity under subsection (e) of this section, the registry shall notify such person of the provisions of Sections 68-11-255, 36-1-142, 36-1-102(1)(A)(v), and 37-2-402(10)(A), concerning abandoned infants and shall inform such person that it is the duty of such person to make appropriate inquiries concerning any possibly relevant birth.

SECTION 7. No criminal prosecution shall be based upon a mother's act of voluntarily delivering her unharmed infant at a facility pursuant to Section 68-11-255 if the mother acts in full compliance with such section.

SECTION 8. The Departments of Children's Services and Health are authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, as necessary to effectuate the provisions of this act.

SECTION 9. The Department of Health, in conjunction with the Department of Children's Services, shall encourage and support, to the extent of existing resources, community programs to raise public awareness of the incidents of infant abandonment and to provide information and intervention services for parents of unwanted infants.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 12. This act shall take effect July 1, 2001, the public welfare requiring it.

PASSED: June 7, 2001

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 19<sup>th</sup> day of June 2001

  
DON SUNDQUIST, GOVERNOR